

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002027

FILED: _____

STATE OF ARIZONA

BARTON J FEARS

v.

DAVID W RASELEY

GEORGE M STERLING JR

PHX MUNICIPAL CT
REMAND DESK CR-CCC
HONORABLE KAREN KLAUSNER
PHOENIX CITY COURT
300 W WASHINGTON
PHOENIX AZ 85003

MINUTE ENTRY

Phoenix City Court

Cit. No. #8943509; #8944866

Charge: INTERFERING WITH JUDICIAL PROCEEDINGS
INTERFERING WITH JUDICIAL PROCEEDINGS

DOB: 05/03/44

DOC: 03/24/00; 05/15/00

This Court has jurisdiction of this appeal pursuant to the
Arizona Constitution Article VI, Section 16 and A.R.S. 12-

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002027

124(A). This case has been under advisement without oral argument and the Court has considered and reviewed the record of the proceedings from the Phoenix City Municipal Court, exhibits made of record and the memoranda submitted by both parties.

Appellant was charged with two counts of violating A.R.S. 13-2810(A)(2), Interfering with Judicial Proceedings, a class 1 misdemeanor. A trial to the court was held on September 28, 2000 and Appellant was convicted of both charges. On September 28, 2000, Judge Klausner suspended sentence for a period of two years and placed the Defendant on probation. The probationary terms included that the Defendant be a law abiding citizen, notify the court immediately of any change of address or telephone number, and not "harm, threaten or harass or have any contact with Edgidia Lopez". The Court did not order any fine or any term of imprisonment as a term and condition of probation.

Appellant claims that he was denied his right to a trial by jury. Appellant argues that the possibility of six (6) months imprisonment and a \$2500.00 fine on each charge renders the offenses serious and not "petty". This appears to be a case of first impression involving A.R.S. 13-2810. This Court was unable to discover any reported cases in Arizona dealing with the issue of a right to jury trial to persons charged with interfering with judicial proceedings.

The Federal law is not helpful in regard to this issue. The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right to a jury trial. Lewis v United States, 518 U.S. 322, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); Blanton v North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989). Arizona has, in fact, extended the right of a jury trial much further than guaranteed by the United States Constitution. State ex rel. McDougall v Strohson, 190 Ariz. 120, 945 P.2d 1251 (1997). The Arizona Supreme Court in McDougall, Id., listed four factors to

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002027

evaluate in determining the right to a jury trial in the State of Arizona. The first three factors are found in Rothweiler v Superior Court, 100 Arizona 37, 410 P2d 479 (1966):

1. The length of possible incarceration;
2. The moral quality of the act charged (sometimes referred to as the "moral turpitude" issue);
3. Its relationship to common law crimes.

The fourth consideration comes from State ex rel. Dean v Dolny, 161 Ariz. 297, 778 P.2d 1193 (1989) and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

The length of possible incarceration in this case is six (6) months imprisonment; the maximum possible sentence for all class 1 misdemeanors. This factor is not controlling as Defendants charged for other class 1 misdemeanors such as assault or disorderly conduct are not entitled to trials by jury. Goldman v Kautz, 111 Ariz. 431, 531 P.2d 1138 (1975); Bruce v State, 126 Ariz. 271, 614 P.2d 813 (1980); O'Neill v Mangum, 103 Ariz. 484, 445 P.2d 843 (1968).

An evaluation of the moral quality of the act charged requires this Court to consider those facts which established Appellant's conviction. Appellant violated a domestic violence Order of Protection. Appellant was not charged with a crime involving dishonesty or fraud or any other type of crime involving a deficient moral character. This Court concludes the crime is not of such a moral quality that a jury trial would be required.

In considering the relationship of the crime, Interfering with Judicial Proceedings to common law crimes, this Court notes the similarity of the crime charged to criminal contempt. A.R.S. 13-2810 is, however, a separate crime from criminal contempt. This offense of Interfering with Judicial Proceedings had no common law antecedents.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002027

Finally, this Court concludes that there are no sufficiently grave collateral consequences of a conviction of the crime of Interfering with Judicial Proceedings that would entitle Appellant to a jury trial.

This Court, therefore, concludes that the trial court correctly denied Appellant's request for a jury trial in this case.

Appellant also claims because there were two separate counts that he was exposed to imprisonment of a term greater than six months. A similar claim was expressly rejected in Bruce v State, supra.

Appellant also claims that he was denied the right of confrontation when the trial judge precluded questions to the victim, Edgidia Lopez, regarding her legal status within the United States. Certainly the trial judge has broad discretion to limit the scope of cross examination. State v Navarro, 132 Ariz. 340, 645 P.2d 1254(App. 1982). It clearly appears from the record that the trial court did not abuse its discretion in precluding questions of the victim's legal status within the United States. The victim's legal status may have been relevant for purposes of establishing her motivation or reason for obtaining the Domestic Violence Order of Protection, but not relevant to the charges pending before the Court which were the alleged violations of those orders of protection by the Appellant.

THIS COURT FINDS no error.

Finally, Appellant contends the he was subjected to an unauthorized wiretap in violation of Federal and State privacy laws. The evidence in this case reflects that the victim called Appellant on the telephone for a "confrontation call". Officer Rivera monitored and recorded this phone call. Appellant

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002027

ignores A.R.S. 13-3012(9), which provides an exception to the warrant requirement and specifically authorizes the following:

The interception of wire, electronic or oral communication by any person, if the interception is effected with the consent of a party to the communication or a person who is present during the communication. . . .

For all of the reasons previously stated, this Court affirms the judgment of guilt and sentence of the Phoenix Municipal Court for all of the reasons stated above.

IT IS FURTHER ORDERED remanding this case back to the Phoenix Municipal Court for further proceedings.